

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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3 In the matter of)
4 NON-STOP SHOPPING.COM, INC.) DOCKET NO. S-03427A-02-0000
5 d/b/a 2C2K.COM, INC.)
6 4757 East Greenway Road) DECISION NO. 66401
7 Phoenix, Arizona 85032)
8 DONALD L. LEVINE) **DEFAULT ORDER TO CEASE AND DESIST,**
9 2 West Waltann Lane) **ORDER OF RESTITUTION, ORDER FOR**
10 Phoenix, Arizona 85023) **ADMINISTRATIVE PENALTIES AND FOR**
11 KENNETH MARK DEUBNER) **OTHER AFFIRMATIVE ACTION AS TO**
12 7911 East Princess Drive, #1249) **RESPONDENT: DONALD L. LEVINE**
13 Scottsdale, Arizona 85255)
14 STEPHEN ROSENBAUM)
15 6801 East Evans Drive)
16 Scottsdale, Arizona 85254)
17 BOBBIE JO SWARTZ)
18 6801 East Evans Drive)
19 Scottsdale, Arizona 85254)
20 Respondents.)
21)
22)
23)
24)
25)
26)

16 On May 20, 2002, the Securities Division ("Division") of the Arizona Corporation
17 Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order
18 to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Relief
19 ("Notice") against multiple respondents, including RESPONDENT DONALD L. LEVINE
20 ("LEVINE"). The Division personally served a copy of the Notice on LEVINE on or about
21 June 5, 2003. The Notice specified that LEVINE would be afforded an opportunity for an
22 administrative hearing regarding this matter upon filing a written request with Docket Control of
23 the Commission within ten days of receipt of the Notice. LEVINE contacted the attorney for the
24 Division, asking what he needed to do about the Notice. That attorney told LEVINE he should file
25 a written request for a hearing with Docket Control. Despite both written and oral advice
26 regarding a request for hearing, LEVINE failed to request a hearing within the required time. On

1 or about July 7, 2003, the Division filed an Application for Entry of Default and Affidavit on
2 Default (“Default Application”) with the Hearing Division of the Arizona Corporation
3 Commission. The Default Application stated that default would be entered against LEVINE if he
4 did not respond and request a hearing within ten (10) days after the date of the Default
5 Application. LEVINE failed to respond or request a hearing within the required time.

6 **I.**

7 **FINDINGS OF FACT**

8 **Respondents**

9 1. At all times material hereto Respondent DEUBNER was a married man and an
10 Arizona resident; his last Arizona residence address was 7911 East Princess Drive #149, Scottsdale,
11 Arizona. His current address is 25 Highland Park Village, Box 100, Dallas, Texas 75205.
12 DEUBNER is an attorney who is licensed to practice law in Texas, but not licensed to practice law in
13 Arizona.

14 2. At all times material hereto, Respondent 2C2K was a Nevada corporation authorized
15 to do business in Arizona, with its registered place of business in Arizona at 4757 East Greenway
16 Road in Phoenix, Arizona.

17 3. At all times material hereto, Respondent STEPHEN ROSENBAUM
18 (“ROSENBAUM”) was a single man and an Arizona resident; his last known residence address in
19 Arizona was 8732 East Sharon Drive, Scottsdale, Arizona.

20 4. At all times material hereto, Respondent BOBBIE JO SWARTZ (“SWARTZ”) was
21 a single woman and an Arizona resident; her last residence address in Arizona was 8732 East
22 Sharon Drive, Scottsdale, Arizona.

23 5. At all times material hereto, Respondent DONALD L. LEVINE (“LEVINE”) was an
24 Arizona resident and a married man; his last known residence address is 511 East Mariposa, Unit 7,
25 Phoenix, Arizona 85012. At all times material hereto, LEVINE operated a marketing and public
26 relations business in Phoenix, which operated from his former residence at 1301 East Missouri in

1 Phoenix, Arizona.

2 6. LEVINE did acts within and from Arizona out of which the claims in the Notice
3 arose.

4 **The Securities Operation**

5 7. On or about June 30, 1999, 2C2K was incorporated as a Nevada corporation.

6 8. Pursuant to the incorporating documents, DEUBNER was the initial President and
7 Secretary of 2C2K. DEUBNER was replaced as President on or about July 2, 1999, by LEVINE.
8 From July 2, 1999 to September 19, 1999, DEUBNER served as Executive Vice President, Secretary,
9 and Treasurer of 2C2K. DEUBNER resigned all offices with 2C2K on September 19, 1999, but
10 again commenced to serve as 2C2K's sole officer and director on February 9, 2000, following the
11 resignation of LEVINE as a corporate officer.

12 9. At the time of its incorporation, 2C2K had no tangible assets.

13 10. 2C2K was authorized to do business in Arizona on or about July 9, 1999, as a d/b/a
14 designation of NON-STOP SHOPPING.COM, INC.

15 11. RESPONDENTS planned that 2C2K would establish an on-line "shopping mall" that
16 would provide an opportunity for Internet shoppers to purchase various products.

17 12. RESPONDENTS had an agreement with Quantum Computer Services, Inc., dba
18 MyOwnEmail.com ("MOE"), a Louisiana corporation, pursuant to which MOE had agreed to
19 provide advertising to email subscribers for the 2C2K "mall."

20 13. RESPONDENTS negotiated with merchants to offer goods and services through their
21 Internet "shopping mall"; however, RESPONDENTS never set up a website that actually offered the
22 goods and services these merchants had agreed to provide.

23 14. Beginning on or about June 30, 1999, LEVINE offered and sold securities, namely
24 shares of stock in 2C2K, within and from Arizona; LEVINE promoted the investment to potential
25 investors through personal contacts with potential investors.

26 15. LEVINE participated in the preparation of a written business plan for 2C2K (the

1 “Business Plan”), copies of which LEVINE provided to some potential investors in 2C2K.

2 16. The Business Plan contained false and misleading statements regarding the business
3 of 2C2K and the status of its business, and omitted to state material facts regarding the business and
4 status of business of 2C2K. Among other things, the business plan:

5 a) Stated that 2C2K would “immediately construct” its website, when in fact the
6 website was not immediately constructed;

7 b) Projected that the business would be profitable by the fourth quarter of 1999,
8 when LEVINE had no reasonable basis in fact for that projection;

9 c) Failed to provide any background information regarding the principals of the
10 company, and did not provide even the names of certain principals of the company;

11 d) Provided financial and profit projections without any factual or historical
12 bases therefor; and

13 e) Presented estimated expenses that did not accurately reflect the manner in
14 which LEVINE intended to utilize or actually utilized investment capital.

15 17. During the course of offering and selling shares of 2C2K stock, LEVINE represented
16 that the stock would be publicly offered within six months after each investor’s purchase and that, if
17 the stock were not publicly offered by the end of such six month period, the investor could request
18 the return of the investment. The impression given to potential investors was that the company
19 would return the investment capital to the investor.

20 18. Shares of 2C2K stock were offered and sold to at least nine investors, and a total of at
21 least \$162,500.00 was received from investors as a result of such sales. Although the sales were
22 purportedly made pursuant to a private placement exemption from registration, LEVINE failed to
23 comply with the requirements for such an exemption from registration. LEVINE’s failures to comply
24 included failure to ensure that the investors all were accredited or sophisticated investors, and/or
25 failure to provide investors with sufficient truthful information to enable them adequately to evaluate
26 the risks of the investment.

1 19. Funds received from at least six investors were wire transferred by the investors
2 directly to DEUBNER's Texas attorney's Trust Account; the remaining investment funds were
3 deposited into LEVINE's personal bank account or into an account established for the benefit of
4 2C2K.

5 20. When funds were received from investors into DEUBNER's Texas attorney's Trust
6 Account, DEUBNER immediately disbursed all such funds by writing checks to himself and to other
7 RESPONDENTS. All investor funds deposited into DEUBNER's Texas attorney's Trust Account
8 were distributed directly to the individual RESPONDENTS herein.

9 21. Subsequent to the offers and sales referred to herein, 2C2K entered into an agreement
10 with eFling.com, Inc., a Nevada corporation, pursuant to which eFling.com, Inc. acquired 2C2K.
11 2C2K thereupon ceased to exist as an independent entity.

12 22. The securities referred to above were not registered pursuant to the provisions of
13 Articles 6 or 7 of the Securities Act.

14 23. LEVINE offered or sold securities within or from Arizona, while not registered as
15 dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

16 24. In connection with the offer or sale of securities within or from Arizona, LEVINE
17 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue
18 statements of material fact or omitted to state material facts which were necessary in order to make
19 the statements made not misleading in light of the circumstances under which they were made; and
20 (iii) engaged in transactions, practices, or courses of business which operated or would operate as a
21 fraud or deceit upon offerees and investors. LEVINE's conduct includes, but is not limited to, the
22 following:

23 a) LEVINE represented that 2C2K's stock would be publicly traded within six
24 (6) months after investors purchased their shares, when in fact LEVINE had no basis in
25 fact for making such a representation.

26 b) LEVINE represented to potential investors and investors that, if 2C2K's

1 stock was not publicly offered within six months after an investor's purchase, the investor
2 could request the return of the full amount invested. This representation gave rise to an
3 inference that an investor's funds would be returned pursuant to such a request, when in
4 fact no investor's funds were returned pursuant to such a request.

5 c) LEVINE failed to ensure that all potential investors were accredited or
6 otherwise sophisticated investors before accepting their investments.

7 d) LEVINE failed to provide potential investors with information adequate to
8 enable them to evaluate the risks of the investment.

9 e) LEVINE failed to provide potential investors with accurate written
10 information regarding the financial condition of 2C2K.

11 f) LEVINE failed to disclose to potential investors the purposes for which the
12 funds invested would be utilized, and specifically failed to disclose that those funds would
13 be distributed directly to the principals and promoters of 2C2K, including LEVINE.

14 25. LEVINE made, participated in, or induced the offers and/or sales and other conduct
15 referred to herein.

16 II.

17 CONCLUSIONS OF LAW

18 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
19 Arizona Constitution and the Securities Act.

20 2. LEVINE offered or sold securities within or from Arizona, within the meaning of
21 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

22 3. LEVINE violated A.R.S. § 44-1841 by offering or selling securities that were
23 neither registered nor exempt from registration.

24 4. LEVINE violated A.R.S. § 44-1842 by offering or selling securities while neither
25 registered as a dealer or salesperson nor exempt from registration.

1 5. LEVINE violated A.R.S. § 44-1991 by (a) employing a device, scheme or artifice to
2 defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging
3 in transactions, practices or courses of business which operate or would operate as a fraud or
4 deceit.

5 6. LEVINE's conduct is grounds for a cease and desist order pursuant to A.R.S.
6 § 44-2032.

7 7. LEVINE's conduct is grounds for an order of restitution pursuant to A.R.S.
8 § 44-2032.

9 8. LEVINE's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

10 **III.**

11 **ORDER**

12 THEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, and
13 the default by LEVINE's failure to respond to the Notice or to request a hearing, the Commission
14 finds that the following relief is appropriate, in the public interest, and necessary for the protection
15 of investors:

16 IT IS ORDERED, pursuant to A.R.S. §44-2032, that LEVINE, and any of his agents,
17 employees, successors and assigns, permanently cease and desist from violating the Securities Act.

18 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that LEVINE shall, jointly
19 and severally, pay restitution to investors shown on the records of the Commission in the amount
20 of \$162,500, plus interest at the rate of 10% per annum from the date of each investment until paid
21 in full. Payment shall be made by cashier's check or money order payable to the "State of
22 Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona
23 Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to
24 investors. If LEVINE does not immediately comply with this order of restitution, any outstanding
25 balance shall be in default and shall be immediately due and payable.

26 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that LEVINE shall pay an

administrative penalty in the amount of \$25,000, payable to the "State of Arizona." Payment shall be made by cashier's checks or money orders payable to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. The payment obligations for these administrative penalties shall be subordinate to any restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full, or if LEVINE has defaulted prior to fulfilling LEVINE's restitution obligations. For the purposes of this Order, a bankruptcy filing by LEVINE shall be an act of default on LEVINE's restitution obligations.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

<u>/s/ Marc Spitzer</u>	<u>William Mundell</u>
CHAIRMAN	COMMISSIONER
<u>Jeffrey Hatch-Miller</u>	<u>Lowell Gleason</u>
COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, ~~JAMES G. JAYNE~~, BRIAN C. McNEIL, Interim Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 14th day of October, 2003.

/s/ Brian C. McNeil
~~JAMES G. JAYNE~~ BRIAN C. McNEIL
 Interim Executive Secretary

DISSENT

This document is available in alternative formats by contacting Shelly M. Hood, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail shood@cc.state.az.us.
 (KCD)